IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 9531 of 2004

Between:

A.P. Industrial Infrastructure Corporation Limited (APIIC) Parisrama Bhavan, 6th Floor, Basheerbagh, Hyderabad, rep. by its Vice Chairman & Managing Director,

..... PETITIONER

AND

1.Presiding officer Labour Court-I, A.P.,HYderabad.
2.Sri A Narayana Rao, Advocate, Room No.113, 2-c Floor, Above

SBI, Vyas Complex, M.G.Road, Ranigunj, Sec'bad-003.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate order or direction declaring the orders dated 1.5.2004 in E.P.No.23/2003 in M.P.No. 73/2002 made by the Respondent No.1 as illegal, unjust, unsustainable and set aside the same.

Counsel for the Petitioner: MR.JANARDHAN RAO KOTAMA RAJU

Counsel for the Respondent No.1: GP FOR LABOUR

Counsel for the Respondent No.2: Mr.A Narayan Rao (Party-in-person)

The Court made the following:

ORDER:

The petitioner – A.P. Industrial Infrastructure Corporation Limited, questions the order, dated 1.5.2004 made in E.P.No.23 of 2003 in M.P.No.73 of 2002 on the file of Labour Court-I, Andhra Pradesh, Hyderabad.

The 2nd respondent herein was retired from the service of the petitioner-Corporation under voluntary retirement scheme and he was relieved from the service with effect from 31.07.2002. It is stated that as per the clause 6 of the proceedings dated 27.07.2002/29.07.2002, he was to be sanctioned three months pay as per the conditions of the service applicable read with the orders of the Government in G.O.Ms.No.16, Public Enterprises (PE-III) Department, dated 22.03.2001. As the petitioner was sanctioned only two months, 18 days pay instead of three months notice pay, he made a representation for the sanction of three months notice pay in full including all the allowances, as per the relieving orders under Voluntary Retirement scheme. As the said amount has not been paid, the 2nd respondent herein, filed M.P.No.73 of 2002 on the file of Presiding Officer, Labour Court-I, Hyderabad to direct the Writ Petitioner herein for the payment of balance amount of the notice pay of Rs.11,039.60 with interest thereon at 12% p.a. from 01.08.2002 to till the date of payment.

The 2nd respondent herein worked as a Senor Assistant in the petitioner – Corporation and his application dated 20.07.2002 for voluntary retirement scheme, was accepted by the petitioner-Corporation and relieved the 2nd respondent from service with effect from 31.07.2002.

The Labour Court held that as per the guidelines issued in G.O.Ms.No.16 dated 22.03.2001, the 2nd respondent herein is entitled for three months pay besides other benefits. As against the three months pay, the petitioner herein has calculated two months and 18 days pay, amounting to Rs.31,476.90. The Labour Court held that the 2nd respondent is entitled for the remaining amount of Rs.11,039.60 for the balance 12 days, as he was paid the amount for two months, 18 days only. Similar contention of the petitioner herein as regards to three months notice pay amounts to basic pay + dearness allowance only and not other allowances. The first respondent herein rejected the contention of the petitioner and held that the basic pay and D.A. excludes the other allowances applicable to the service conditions and therefore, the Labour Court, specifically held that the 2nd respondent is entitled for three months basic pay + D.A. and all other allowances. Therefore, the 2nd respondent is entitled for the differential amount payable for 12 days, since the petitioner has only paid basic pay and dearness allowance payable for two months and 18 days. In the operative portion of the said M.P.No.73 of 2002 dated 15.3.2003 of the Labour Court, specifically held that the petitioner has to calculate for the balance 12 days pay including all allowances. The petitioner-Corporation has not questioned the said order of the Labour Court-I passed in MP No.73 of 2002 dated 15.03.2003, and it has become final.

In pursuant to the orders in the M.P., the petitioner herein paid a sum of Rs.4,882.60 + interest and as the balance amount of Rs.7338/- + interest, was not paid, the 2nd respondent herein filed the E.P.No.23 of 2003 in M.P.No.73 of 2002. In the said E.P. the Labour Court, directed the petitioner herein to pay the balance amount of Rs.7338/- with interest thereon at the rate of 12% p.a. There is no dispute with regard to the said calculation, as the gross pay of the 2nd respondent is Rs.15,125.50 per month and the amount deposited by the petitioner is referable to pay, Dearness allowance and other allowances based on the gross pay, payable to the 2nd respondent.

As the car of the Managing Director of the petitioner – Corporation was attached, the said balance amount was also deposited by the petitioner – Corporation before the Labour Court and filed this Writ Petition and obtained interim suspension of the said order.

I have heard the contentions of respective counsel.

Learned counsel for the petitioner submits that the calculation of the Labour Court is contrary to the Government Order and therefore, the consequential orders in E.P. are unsustainable and cannot be executed.

Learned counsel for the 2nd respondent submits that the order in the main M.P. has become final, as the same has not been questioned, it is not open for the petitioner to question the orders in the execution petition.

The Labour Court categorically held that the 2nd respondent is entitled for pay + Dearness allowance and other all allowances attached to the post of Senior Assistant as per the conditions and therefore, the 2nd respondent is also entitled for other allowances. Therefore, I am of the opinion that it is not open for the petitioner to question the E.P. order without questioning the orders in the main M.P. I do not see any merits in this Writ Petition.

Accordingly, the Writ Petition is dismissed. No costs.

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31.08.2004

BSS/DSK

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.Presiding officer Labour Court-I, A.P.,HYderabad.
2.2CCs to G.P. for Labour, High Court Buildings, Hyderabad (OUT)

3.2CD copies